

CRP 11/2007
BEFORE

THE HON'BLE MR.JUSTICE HN SARMA

Heard Mr MH Rajborbhuya, learned counsel for the petitioner.

This petition has been filed under Article 227 of the Constitution of India challenging the legality and the validity of the order dated 7.2.2006 passed by the learned Civil Judge (Senior Division), Hailakandi, acting as the Executing Court in TE Case No 16/06, whereby the learned Executing Court refused to stay the proceeding of the execution case as prayed for by the petitioner.

The respondent herein obtained a decree in TS No 68/92, which was filed under section 6 of the Specific Relief Act for recovery of possession of the suit land. The revision petitioner being CRP No 291/2000 challenging the said judgment and decree passed in TS No 68/92 also was dismissed by this Court on 28.4.06, the petitioner thereafter as plaintiff filed TS No 106/06 in the Court of the learned Civil Judge (Junior Division) Hailakandi. While the respondent applied for execution of the decree passed in TS No 68/92, the plaintiff/petitioner who are defendant in the earlier suit filed an application purportedly under Order 21, Rule 29, CPC, praying for stay of the execution proceeding till disposal of the suit. It is contended that the petitioner has filed the present suit for declaration of right, title and interest over the suit land and also for a declaration that the decree passed in TS No 68/92 as illegal, void and inoperative.

Admittedly, the plaintiff/petitioner contested the earlier suit at all stages and the decree passed by the learned trial Court allowing recovery of possession of the suit land was affirmed by this Court in the aforesaid Civil Revision Petition No 291/00. In a suit filed under section 6 of the Specific Relief Act, the title is not to be decided. What is to be decided only as to whether the plaintiff has been evicted from the suit premises without following due procedure of law or without taking recourse to law. The earlier suit was decreed on the facts proved thereon which was confirmed by this Court. In the present suit the plaintiff is to prove his case as pleaded in the plaint. Merely by filing the present suit for declaration of right, title and interest, the earlier decree passed by the competent Court under section 6 of the Specific Relief act will not wipe out unless the Court gives finding otherwise to be decided at the appropriate stage on final termination of the decretal proceeding. The decree passed in the suit is in operation which will however be subject to the result of the present suit. The learned trial Court on consideration of the relevant facts and circumstances rejected the prayer to stay the execution proceeding. I do not find any jurisdictional error in passing the impugned order justifying interference by this Court in exercise of superintending jurisdiction under Article 227 of the Constitution of India. Accordingly, this petition is devoid of merit and is dismissed. However, the learned trial Court shall dispose of the suit as expeditiously as possible.